IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WA.No. 1514 of 2007

AGAINST THE JUDGEMENT IN WPC.14789/2007 Dated 21/06/2007
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APPELLANT: PETITIONERS
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1. P.VIJAYADAS, EX.MLA,
   MEMBER, BOARD OF DIRECTORS OF
   THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD.
   EAST FORT, THIRUVANANTHAPURAM.

2. ADV.N.PAKASAM,
   MEMBER, BOARD OF DIRECTORS OF
   THIRUVANANTHAPURAM DSTRICT CO-OPERATIVE BANK LTD.,
   EAST FORT, THIRUVANANTHAPURAM.

3. ADV.G.SUBODAN,
   MEMBER, BOARD OF DIRECTORS OF
   THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD.
   EST FORT, THIRUVANANTHAPURAM.

4. G.SHAMSUDDIN,
   MEMBER, BOARD OF DIRECTORS OF
   THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD.
   EAST FORT, THIRUVANANTHAPURAM.

5. M.A.KARIM,
   MEMBER, BOARD OF DIRECTORS OF
   THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD.
   EAST FORT, THIRUVANANTHAPURAM.

6. M.P.SHAJU,
   MEMBER, BOARD OF DIRECTORS OF
   THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD.
   EAST FORT, THIRUVANANTHAPURAM.

7. B.SASIKUMARI,
   MEMBER, BOARD OF DIRECTORS OF
   THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD.

EAST FORT, THIRUVANANTHAPURAM.

BY ADV. SRI.V.R.VENKATAKRISHNAN (SR. ADVICATE)
SRI.B.S.SWATHY KUMAR

RESPONDENTS: RESPONDENTS
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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
KERALA STATE, THIRUVANANTHAPURAM.

2. THE THIRUVANANTHAPURAM DISTRICT
CO-OPERATIVE BANK LTD., THIRUVANANTHAPURAM
REPRESENTED BY ITS GENERAL MANAGER.

ADDL.3. N.BHASURANGAN, PRESIDENT,
THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK,
THIRUVANANTHAPURAM.

R1 BY GOVT PLEADER SMT A.G. ANEETHA
R2 BY ADV. SRI T.R. HARIKUMAR
R3 BY ADV. SRI P.V. BABY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 03/07/2007, ALONG WITH WA NO. 1562 OF 2007
WA NO. 1572 OF 2007 THE COURT ON 10/07/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal Nos. 1514, 1562 and 1572 of 2007

Dated: 10th July 2007

JUDGMENT

Radhakrishnan, J.

The entire controversy in this batch of cases centres round the following two questions; (i) whether the withdrawal of nomination of the sixth petitioner in W.P.C. No 14789 of 2007 by the Board of Directors of Trivandrum District Co-operative Bank Limited, in short "the Bank", from the Managing Committee of the Kerala State Co-operative Hospital Complex and Centre for Advanced Medical Services Limited, in short "Pariyaram Society" is legal or not, and (ii) whether the resolution dated 13.04.2007 passed by the Managing Committee of Pariyaram Society for appointing Returning Officer for conducting election to the Society, and can be acted upon by the Registrar of Co-operative Societies.

2. W.P.C. No 14789 of 2007 was preferred by the appellants in W.A. No 1514 of 2007 seeking a writ of certiorari to quash Ext. P15 order dated 02.05.2007 passed by the Registrar of Co-operative

Societies, Kerala and also for a declaration that sixth petitioner is legally entitled to continue as a nominee of the Bank to the Pariyaram Society and for other consequential reliefs. W.P.C. No 15849 of 2007 was preferred by the appellants in W.A. No 1562 of 2007 seeking a writ of certiorari to quash Ext. P14 order dated 03.05.2007 passed by the Registrar of Co-operative Societies rescinding the resolution dated 13.04.2007 and also for a writ of mandamus directing the Registrar to appoint a returning officer to conduct the election to the Managing Committee of the Pariyaram Society and also for other consequential reliefs.

3. Petitioners in W.P.C. No 14789 of 2007, seven in number, are members of the Board of Directors of the Trivandrum District Co-operative Bank. Sixth petitioner, the Vice President of the Bank, is also a nominee of the Bank to the Managing Committee of the Pariyaram Society. The Board of Directors of the Bank consisted of 13 members and they were served with a notice dated 19.03.2007 informing them that a meeting of the Board would be held on Tuesday, 20.03.2007 at the Conference Hall of the Bank for discussing the various items mentioned in the agenda enclosed. Meeting was accordingly convened on the next day at 11.30 A.M

and it came to an end at 2 P.M. Petitioners came to know that soon after the meeting was over, a decision was taken to withdraw the nomination of the sixth petitioner without his and the majority of the members of the Board of Directors' knowledge by manipulating the minutes book by the President and the General Manager with the ulterior motive of reducing the quorum of the Managing Committee of the Pariyaram Society. Noticing such an attempt, majority of the members of the Board of Directors, forwarded a written complaint to the Registrar on 20.03.2007 itself pointing out the manipulation of the minutes by the President and the General Manager. Registrar did not respond to the complaint due to extraneous and political reasons. Consequently petitioners 1 to 5 and 7 had to approach this court by filing W.P.C. No 11464 of 2007 and the sixth petitioner by filing W.P.C. No 10042 of 2001 seeking a direction to the Registrar of Co-operative Societies to pass orders on the complaints filed by them. Writ petitions were disposed of by this court directing the Registrar of Co-operative Societies to take a decision within one month from the date of the judgment. Registrar then issued notice dated 19.04.2007 calling upon the members of the Board of Directors to be present for a personal hearing on 30.04.2007.

4. Registrar of Co-operative Societies however without taking any decision as directed by this court about the alleged withdrawal of the nomination of the sixth petitioner by the Trivandrum Bank, issued a notice dated 21.04.2007 to the Managing Committee of the Pariyaram Society to show cause why the resolution taken on 13.04.2007 to conduct the election on 20.05.2007 shall not be rescinded due to lack of quorum consequent to the withdrawal of the nomination of the sixth petitioner.

5. Petitioners as directed by the Registrar of Co-operative Societies appeared before him on 30.04.2007 and their statements were recorded. They brought to the notice of the Registrar that the agenda of the meeting which was circulated among the members of the Board of Directors did not contain the item of withdrawal of the nomination of the sixth petitioner. Meeting held on that date discussed all the twelve items included in the agenda and the meeting came to a close at 2 P.M and there was no other item for discussion under the caption 13. Immediately after the meeting was over minutes book was manipulated to show the withdrawal of the sixth petitioner from the Managing Committee of the Pariyaram Society with the ulterior motive to see that there would not be any

quorum for the Managing Committee of the Pariyaram Society. Registrar of Co-operative Societies however did not notice any interpolation in the minutes prepared and rejected the complaint filed by the petitioners vide Ext. P15 order which is under challenge in W.P.C. No 14789 of 2007.

6. W.P.C. No 15849 of 2007 was filed by the appellants in W.A.No 1562 of 2007, the Pariyaram Society and its Chairman, challenging Ext.P14 order passed by the Registrar of Co-operative Societies rescinding the resolution passed on 13.04.2007 to conduct election on 20.05.2007 stating that the said resolution was passed in a meeting held at New Delhi, a place beyond the area of operation of the Society and also on the ground that the resolution to conduct election of 17 members would go against the provisions of Section 28 (1A) of the Co-operative Socieites Act. Further it was also pointed out that the sixth petitioner's nomination was withdrawn by the Trivandrum District Co-operative Bank, consequently there was no quorum for the meeting held on 13.04.2007. For the above mentioned reasons Registrar rescinded the resolution passed by the Managing Committee of the Pariyaram Society on 13.04.2007.

7. We are therefore primarily concerned with the validity of Ext.

P15 order dated 02.05.2007 in W.P.C. No 14789 of 2007 and Ext. P14 order dated 03.05.2007 in W.P.C. No 15849 of 2007.

8. Sri V. R. Venkitakrishnan, Senior Counsel appearing for the appellants in W.A. Nos. 1514 and 1562 of 2007 submitted that the minutes of the meeting of the Committee held on 20.03.2007 was manipulated by the President and General Manager of the Bank due to political and extraneous reasons. Counsel submitted that the so-called withdrawal of the nomination of the sixth petitioner in W.P.C. No 14789 of 2007 was a political manoeuvring with the ultimate object of ousting the Managing Committee of the Pariyaram Society. Senior Counsel submitted that the minutes book of the Trivandrum Bank was manipulated to show the withdrawal of the nomination of the sixth petitioner from the Pariyaram Society after the meeting was over at about 2.00 P.M on 20.03.2007, an item which was not included in the agenda.

9. Senior Counsel also submitted that there was a lot of confusion as to whether Pariyaram Society is a federal Society or a primary society. Conflicting views have been expressed by the Registrar of Co-operative Societies in various proceedings before this court and also elsewhere. Counsel referred to the counter

affidavit filed on behalf of the Registrar of Co-operative Societies in W.P.C. No 7820 of 2007 as well as in the present case and pointed out the conflicting stand taken by the Registrar with regard to the question whether it is a primary society or a federal society. Senior Counsel also referred to the judgment of the Division Bench of this court in Registrar of Co-operative Societies v. Ahamed Ali (2007 (2) KLT 320)wherein it was noticed that Pariyaram Society is a primary society. Counsel submitted that the Managing Committee of the Pariyaram Society had passed a resolution on 13.04.2007 to hold election of 17 members to the Managing Committee and counsel submitted that if it is the stand of the Registrar that Pariyaram Society is a primary society they are willing to restrict the number to 15. Senior Counsel submitted that the term of the Pariyaram Society will be over by 11.07.2007 and the election could not be conducted due to the indifferent attitude of the Department and therefore it is highly necessary, in the interest of justice that the term of the Committee be extended and a direction given to the Registrar to appoint a Returning Officer to conduct the election. Sri George Poonthottam, counsel appearing for the appellants in W.A. No 1572 of 2007 supported the Senior Counsel appearing for the

petitioners in W.P.C. No 14789 of 2007.

10. Learned Government Pleader Smt A.G. Aneetha submitted that there is no illegality in Ext. P15 order passed by the Registrar on 02.05.2007 in W.P.C. No 14789 of 2007 or in Ext. P14 order dated 03.05.2007 in W.P.C. No 15849 of 2007. Government Pleader submitted that Registrar of Co-operative Societies has perused the minutes book of the Bank and the agenda and found that there was no manipulation in the minutes and has rightly rejected the complaint filed by the petitioners, consequently the decision taken by the Board of Directors of the Bank to withdraw the nomination of the sixth petitioner from the Managing Committee of Pariyaram Society was legal. Government Pleader also submitted that since sixth petitioner's nomination was withdrawn from the Managing Committee of the Pariyaram Society, the Committee has lost its quorum and therefore resolution passed on 13.04.2007 has no legal effect. Further learned Government Pleader submitted that Managing Committee has no power to elect 17 members since the society is a primary society though it is federal in character. Government Pleader also objected to the request for extension of the term of the Managing Committee of the Pariyaram Society.

Reference was also made to the following decisions. Board of Directors of Kottappady Service Co-op. Bank v. Joint Registrar and others (1994 (2) K.L.J. 795), Dist. Industries Centre v. Kaithari Neithu Sahakarana Sangham (1999 (1) KLJ 885) and State of Kerala v. Thilothaman (1992 (2) KLT 220) and the decision of the apex court in State of Rajasthan v. Praful Ranwah (1993 Supp. (1) S.C.C. 556).

11. We shall first examine the question whether the decision of the Board of Directors of the Trivandrum Bank to withdraw the nomination of the sixth petitioner to the Pariyaram Society was taken in a properly constituted meeting which was held on 20.03.2007. Admittedly such an item was not included in the agenda circulated among the members of the Board of Directors on 19.03.2007. Once an important item is not included in the agenda, burden is heavy on the President and General Manager of the Bank and the members alleged to have participated in the meeting to establish that such an item was taken up due to specific reasons or extreme urgency with the permission of the chair and that all the members present have waived the previous notice. Majority members of the Board of Directors assert that no such item was discussed in the meeting held on 20.03.2007. Registrar, in spite of the direction of

this court to take a decision on the complaint filed by the petitioners and to examine the question as to whether the alleged withdrawal of the nomination of the sixth petitioner from the Pariyaram Society was legal or not, was more eager to issue a notice to the members of the Managing Committee of the Pariyaram Society to show cause why resolution taken by them on 13.04.2007 be not rescinded due to the withdrawal of the nomination of the sixth petitioner. Further, Registrar without examining the question as to whether such an issue was in fact discussed in the meeting held on 20.03.2007 blindly accepted what was minuted in the minutes book. Registrar is expected to conduct a detailed probe into the allegations raised by the petitioners of manipulation of the minutes raised by the petitioners and also to examine whether there was any hidden agenda to withdraw the nomination of the sixth petitioner. There is nothing to show in Ext. P15 that Registrar has conducted any such enquiry instead of blindly following what was minuted in the minutes book. Registrar should have made a thorough enquiry to ascertain whether the complaint was true or not. Further petitioners have also asserted in the complaint that the second petitioner as well as the fifth petitioner had not left the venue of the meeting at 12

noon and 12.15 P.M and the noting in the minutes to that effect was incorrect. No enquiry was conducted by the Registrar to ascertain that fact as well. Further it may also be noted that rest of the five members, alleged to have participated in the meeting, did not appear before the Registrar in spite of notice and controverted the allegation raised by the petitioners. We are therefore of the considered view that Registrar did not apply his mind to the various allegations raised by the majority of the members of the Board of Directors about the alleged resolution withdrawing the nomination of the sixth petitioner from the Managing Committee of Pariyaram Society.

12. The withdrawal of nomination of a nominee from the Managing Committee of a society is an important item and normally should have found a place in the agenda circulated. If any of the items which is not included in the agenda has to be taken up unanimous consent of the whole body is necessary. In this context, we may refer to a passage from the book “Shackleton on the Law and Practice of Meetings”, Seventh Edition, page 42:

> “If members are summoned to appear for a particular purpose, they cannot proceed to any other matter without the

unanimous consent of the whole body, but if they are all present and waive the formality of notice a resolution passed at such meeting will be good even though the meeting was not assembled for that particular purpose."

(emphasis added)

Dealing with 'agenda` in the above mentioned book at page 45, it is stated:

"It is usual to include in the agenda the item "Any other business" and matters of an informal or unimportant nature could be transacted under this heading. The chairman should not however permit a matter of major importance to be raised under this item unless it is urgent, i.e., that action needs to be taken before the next meeting. He should be vigilant to ensure that those whose main interest lies in the passing of resolutions do not use "other business" to bounce a resolution through a meeting, most of whose members may by then be ready to go home."

In this connection reference may be made to the judgment of the learned single judge in N. Sudarsanan v. State of Kerala (1996 (2) K.L.T 942) wherein learned judge has taken the view that resolution

passed on a subject not included in the agenda of a meeting would be good only if all the members of the committee are present at the meeting and if all of them waived the requirement of previous notice.

13. We are of the view that none of the above mentioned aspects have been taken into consideration by the Registrar while examining the complaint filed by the petitioners. In our view, there is total non application of mind by the Registrar and he failed to consider the relevant facts and the law applicable to the issue raised. Registrar was not called upon to examine what was minuted in the minutes book which is discernible from the minutes book itself but the question to be examined was whether what was minuted is true or not and this has not been done by the Registrar. In such circumstances,we have no hesitation to quash Ext. P15 order dated 02.05.2007 passed by the Registrar in W.P.C. No 14789 of 2007 since it was passed in total non application of mind. The order is accordingly quashed and the Registrar is directed to reconsider the complaint filed by the petitioners on 20.03.2007 afresh in accordance with law.

14. We shall now examine whether there was any illegality in the resolution passed by the Managing Committee of the Pariyaram

Society on 13.04.2007. The reason for holding the meeting at New Delhi was that one of the members of the Managing Committee could not move out of Delhi since he had sustained multiple fracture on his leg and without him there would not be sufficient quorum for the meeting. Under such circumstances, meeting was convened at New Delhi. We find no illegality in convening the meeting at New Delhi in the above mentioned circumstances. We have already found that Registrar had not properly examined the complaint raised by the petitioners in W.P.C. No 14789 of 2007 regarding the alleged resolution passed in the meeting held on 20.03.2007 withdrawing the nomination of the sixth petitioner to the Pariyaram Society. We hold that until a decision is taken by the Registrar as directed by us, the nomination of the sixth petitioner to the Pariyaram Society would hold good, since the very question whether his nomination was legally withdrawn or not itself is of serious controversy. Consequently there was sufficient quorum for the meeting held on 13.04.2007.

15. The further question to be considered is whether the resolution passed by the Board of Directors to conduct election of 17 members to the Managing Committee was proper or not. On this

issue there is lot of confusion. Registrar and other officials used to take conflicting stand on the question whether Pariyaram Society is a primary society or federal society. Reference may be made to the counter affidavit filed on behalf of the Registrar in W.P.C.No 7820 of 2007. That writ petition was preferred by the Chairman of the Pariyaram Society seeking a direction to the Registrar of Co-operative Societies to appoint a Returning Officer for the conduct of election. Society had also challenged Ext P3 notification dated 24.2.2007 issued from the office of the Registrar wherein it was stated that it would not be possible to accede to the request for conducting the election since there were five months left for the expiry of the period of the Managing Committee. In that case counter affidavit was filed on behalf of the Registrar of Co-operative Societies, wherein it is stated as follows:

> "It is also submitted that the society of the petitioner comes under the category of federal society as the members include both individual and institutional members. Moreover, the area of operation of the petitioner society is statewide. Under these circumstances, this respondent is not the competent authority to appoint a Returning Officer. Under

> section 28 B the authority to conduct election by appointing Returning Officer for a federal society is the State Co-operative Election Commission. The petitioner has not approached the State Election Commission for conducting election as the society of the petitioner belongs to federal society. It is also submitted that the respondent is taking action for not making necessary amendments as provided under Circular 38/2004 issued by this respondent."

Writ petition was however disposed of by the Division Bench on 02.04.2007 stating that it was unnecessary to decide the legal issues stated therein but gave a direction to the Registrar of Co-operative Societies to take steps to appoint the Returning Officer on receipt of ;the resolution. In the counter affidavit filed on behalf of the Registrar in W.P.C. No 15849 of 2007 it is stated as follows:

> "Hence going by the ingredients of the petitioner society it can only be a federal co-operative society and not a primary co-operative society as claimed by the petitioners. Under section 28 (B) the authority to conduct election to a Federal Society is the State Co-operative Election Commission. Hence it is not for this respondent to appoint a Returning Officer to conduct

election to the petitioner society."

Though the same was the stand taken by the Registrar in W.P.C. No 7820 of 2007 this court disposed of that writ petition with direction to the Registrar to appoint Returning Officer on the basis of the resolution passed by the Managing Committee of the Society. Registrar cannot take a contrary stand now stating that it is the State Co-operative Election Commission which is to appoint the Returning Officer. Division Bench of this court in Registrar of Co-operative Societies v. Ahamed Ali (2007 (2) KLT 320) has also opined so far as this society is concerned that facts would show that the society has been treated as a primary society. If that be so, as per Section 28 (1A) of the Act maximum number of members that can be elected is only 15. But the Managing Committee has passed the resolution to elect 17 members which violates Section 28 (1A) of the Act which says that the maximum members of the committee shall not exceed fifteen in the case of a primary co-operative society. Consequently Registrar cannot take action on that resolution but only by the State Election Commission. The Managing Committee has not addressed the Election Commission. Hence even though we have found that

there was sufficient quorum for the meeting held on 13.04.2007 it would not be possible to give a direction to the Registrar of Co-operative Societies to appoint a Returning Officer based on the resolution dated 13.04.2007 since the same would go contrary to Section 28(1A) of the Act.

16. Managing Committee of the Society has therefore to pass a fresh resolution requesting the Registrar of Co-operative Societies to appoint a Returning Officer and then to conduct election to the Managing Committee of the society in accordance with law. We make it clear that we are not expressing any final opinion as to the character of the society and in what manner it has to be classified. However, since the resolution passed by the Managing Committee held on 13.04.2007, goes contrary to Section 28 (1A) of the Act, a situation they have created, this court is not justified in issuing a writ of mandamus directing the Registrar to appoint a Returning Officer on the basis of an illegal resolution. Hence the prayer for extension of the period of the Managing Committee beyond 11.07.2007 for the purpose of passing a proper resolution also cannot be granted.

17. In the above mentioned circumstances, W.A.No 1514 is

allowed, Ext.P15 order passed by the Registrar on 02.05.2007 is quashed and the Registrar is directed to reconsider the complaint submitted by the petitioners therein, afresh as directed above, though may be a fait accompli so far as the Managing Committee of the Pariyaram Society is concerned. Resolution passed by the Managing Committee of the Society on 13.04.2007 is contrary to Section 28 (1A) of the Act and hence no direction is issued to the Registrar to appoint a Returning Officer and hence W.A. No 1562 of 2007 would stand dismissed, so also W.A. No 1572 of 2007.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

10/07/2007
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